

§ 1965.6 Consent of lienholders.

When this subpart requires the consent of other lienholders, consent will be obtained and furnished in writing to the FmHA or its successor agency under Public Law 103–354 by the borrower before the FmHA or its successor agency under Public Law 103–354 enters into a transaction which affects its security or its lien. This consent will, unless otherwise provided in a State Supplement, include an agreement as to the disposition of any funds involved in the transaction.

§ 1965.7 Definitions.

As used in this subpart, the following definitions apply:

(a) *Borrower*. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership, or joint operation is the borrower.

(b) *County Supervisor* also includes Assistant County Supervisor who has written delegated authority to carry out purposes of this subpart.

(c) *District Director* also includes Assistant District Director who has written delegated authority to carry out purposes of this subpart.

(d) *FmHA or its successor agency under Public Law 103–354 loans, FmHA or its successor agency under Public Law 103–354 accounts, FmHA or its successor agency under Public Law 103–354 interests, FmHA or its successor agency under Public Law 103–354 security, FmHA or its successor agency under Public Law 103–354 debts* and similar terms apply to indebtedness owed to, or insured by, the United States of America acting through the FmHA or its successor agency under Public Law 103–354, and to related security instruments.

(e) *Farmer Program loan* includes only Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), Softwood Timber (ST) and Special Livestock (SL) loans, and/or Rural Housing Loans for farm service buildings (RHF).

(f) *Foreclosure sale*. The act of selling security either under the “Power of Sale” in the security instrument or through court proceedings.

(g) *Leasehold*. A right to use farm property for a specific period of time under conditions provided for a lease agreement.

(h) *Mortgage*. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term “mortgage” also refers to any security interest in chattel property.

(i) *Non-Program (NP) Loan*. An NP loan results when credits are extended to ineligible applicants and/or transferees in connection with loan assumptions and sale of inventory properties.

(j) *Note* includes any note, bond, assumption agreement or other evidence of indebtedness.

(k) *Security*. Property of any kind subject to a real or personal property lien including, among other things, appurtenant rights of development, leasehold, grazing or other use privileges.

(l) *Servicing action* includes, among other things, the cash sale or transfer of real estate and chattel property and the assumption of loans.

[51 FR 4140, Feb. 3, 1986, as amended at 52 FR 26138, July 13, 1987; 53 FR 35794, Sept. 14, 1988]

§§ 1965.8–1965.10 [Reserved]

§ 1965.11 Preservation of security and protection of liens.

(a) *Inspection of security*. The County Supervisor will inspect farm real estate security a minimum of one time every 3 years for accounts that are current. More frequent inspections will be made when a borrower is delinquent or otherwise in default or when problems exist involving the security. If all or part of the security is located in another County Office area, the County Supervisor for that area may be requested to inspect the property. Security on non-farm tracts will be inspected when:

- (1) Liquidation action is likely to be taken;
- (2) The property has been abandoned;
- (3) Necessary to protect the interest of the Government; or
- (4) Requested by the borrower.

(b) *Action by FmHA or its successor agency under Public Law 103–354 for account of borrower*. When necessary to protect the interest of the Government, actions will be taken by FmHA

or its successor agency under Public Law 103-354 for the account of the borrower as provided below. Any advances made for the following purposes will be considered protective advances and will be paid in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). Loans may be reamortized without regard to loan limits to include protective advances when authorized on an individual case basis by the State Director.

(1) *Abandoned and Custodial Property.* Determinations of abandonment will be made according to §1955.55 of Subpart B of Part 1955 of this chapter. Services for the management, care, and maintenance of custodial property will be obtained according to §1955.55 of Subpart B of Part 1955 of this chapter. Custodial property may be leased according to the provisions of §1955.66(a)(1) of Subpart B of Part 1955 of this chapter.

(2) *Maintenance.* Complete information concerning the borrower's failure to adequately maintain the security will be documented in the case file. If there is a prior lien, expenditures for maintenance will not be made unless the prior lienholder refuses to make them. Evidence of this unwillingness to do so should be included in the case file.

(3) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with subpart A of part 1925 of this chapter.

(4) *Insurance.* For FmHA or its successor agency under Public Law 103-354 loans secured by liens on real estate, property insurance will be obtained and serviced in accordance with requirements for the kind of loan involved, and in accordance with Subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103-354 Instruction 426.1), and when appropriate, Subpart B of Part 1806 of this chapter (FmHA or its successor agency under Public Law 103-354 Instruction 426.2).

(c) *Actions by third parties which affect security—(1) General provisions.* When third parties bring suit or take any other action which could affect property servicing as security, borrowers

are expected to protect their own interests in the property. A few examples of actions by third parties are: condemnation proceedings, foreclosure, trespass suits, and actions to quiet title.

(i) *County Supervisor's responsibility.* When the County Supervisor learns about a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will immediately send the borrower exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) if another lienholder is foreclosing, and attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. Then the County Supervisor will send the following documents to the State Director: the County Office case file, complete with information concerning the action; recommendations for FmHA or its successor agency under Public Law 103-354 servicing action; a copy of any petition or complaint, as soon as available; current account balances; a current appraisal report; the name and address of the borrower's attorney, if any; and other information which the County Supervisor believes important such as unpaid taxes, judgments, or other liens.

(ii) *State Director's responsibility.* The State Director will consult OGC about all lawsuits involving the property and any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. The payment of other liens by FmHA or its successor agency under Public Law 103-354 will be authorized by the State Director only to protect the Government's interest, not for the protection of the borrower's interest or the interest of any third party. When foreclosure by another creditor or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan or guaranteed loan, or approving a subordination to permit another lender to make a loan, provided:

(A) The requirements for the primary servicing program(s), a subsequent loan, guaranteed loan or subordination are met, and such assistance is necessary to enable the borrower to retain the property, and

(B) The borrower has the ability and resources necessary to overcome the problems that caused the foreclosure or other action, and

(C) The third party agrees to postpone further action pending the processing of the primary servicing programs, a subsequent loan, guaranteed loan or subordination.

(iii) *Other actions.* The State Director may also approve a transfer and assumption under this subpart provided the action will adequately protect the Government's interest and the third party agrees to delay further action pending processing of the transfer and assumption. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(2) *Sale by a prior lien foreclosure.* When FmHA or its successor agency under Public Law 103–354 learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness and the estimated cost of a foreclosure sale. An insured note which is not held by the insurance fund will, whenever possible, be assigned to the insurance fund before a foreclosure sale. Otherwise, the assignment will be completed as soon as feasible after the foreclosure sale.

(i) *Decision to pay off the prior lien.* When, under State law, it is necessary prior to foreclosure to acquire the prior lienholder's rights to protect the Government's junior lien interest, title evidence will be obtained. Information clearly supporting the need to acquire the prior lienholder's rights must be documented and made a part of the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery of the secured debt (not an inventory profit) than it could by bidding at the foreclosure sale, and

(B) After acquisition of the prior lien and completion of any appeals in favor of FmHA or its successor agency under

Public Law 103–354, the account will be accelerated and liquidated in accordance with §1965.26(b) of this subpart. No exception will be made to this provision.

(ii) *Decision not to pay off the prior lien.* If FmHA or its successor agency under Public Law 103–354 decides not to pay off the prior lien, one of the following actions will be taken.

(A) *Making a bid.* Bidding will be completed in accordance with §1955.15(f) (6) and (7) of subpart A of part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA or its successor agency under Public Law 103–354 enters a bid, actions will be taken in accordance with §§1955.15(g) and 1955.18 of subpart A of part 1955 of this chapter.

(B) *Making no bid.* When the State Director determines that no bid will be entered by FmHA or its successor agency under Public Law 103–354, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report. Unsatisfied farmer program loan accounts will be handled in accordance with §1955.18 (f) of subpart A of part 1955 of this chapter.

(iii) *Acquisition of property by exercise of Government redemption rights.* If the Government for any reason did not protect its interest at the time of the foreclosure sale and if the Government has any redemption rights, the State Director will determine whether to redeem the property in accordance with §1955.13 of subpart A of part 1955 of this chapter.

(3) *Foreclosure sale subject to FmHA or its successor agency under Public Law 103–354 mortgage.* When FmHA or its successor agency under Public Law 103–354 learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower attachments 1 and 3 and 4 of exhibit A of subpart S of part 1951 of this chapter and exhibit B of this subpart. If the borrower contacts FmHA or its successor agency under

Public Law 103-354 and wants to apply for servicing relief, the request will be processed in accordance with subpart S of part 1951 of this chapter. If the junior lienholder forecloses and the property is sold subject to the FmHA or its successor agency under Public Law 103-354 mortgage, following the resolution of any appeal in favor of FmHA or its successor agency under Public Law 103-354, the borrower's account will be accelerated and liquidated in accordance with the applicable portion of § 1955.15 of subpart A of part 1955 of this chapter.

(d) *Divorce actions.* See § 1965.27 (b)(5)(iii) of this subpart for directions on servicing security after divorce. A subsequent loan made as a result of a divorce action will be handled in accordance with § 1965.27(b)(13) of this subpart.

[51 FR 4140, Feb. 3, 1986, as amended at 53 FR 35794, Sept. 14, 1988; 56 FR 15829 Apr. 18, 1991; 57 FR 20741, May 15, 1992; 57 FR 36592, Aug. 14, 1992; 58 FR 38928, July 21, 1993]

§ 1965.12 Subordination of FmHA or its successor agency under Public Law 103-354 mortgage.

In accordance with the Food Security Act of 1985 (Public Law 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of "controlled substance") prior to the issuance of the subordination in any crop year, the individual or entity shall be ineligible for a subordination for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants for subordinations will attest on Form FmHA or its successor agency under Public Law 103-354 465-1, "Application for Partial Release, Subordination, or Consent," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A deci-

sion to reject an application for subordination for this reason is not appealable. Softwood timber (ST) loans will not be subordinated.

(a) *Conditions for subordination.* A subordination may be granted for any authorized Farmer Programs loan purpose subject to the following conditions:

(1) The FmHA or its successor agency under Public Law 103-354 debt cannot be refinanced on terms which the borrower can reasonably be expected to meet;

(2) The transaction will further the objectives for which the FmHA or its successor agency under Public Law 103-354 loan or loans were made;

(3) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them, as well as all other debts;

(4) An assignment of the beneficial interest in any stock required in connection with a loan will be obtained as security, when possible and when needed;

(5) The FmHA or its successor agency under Public Law 103-354 indebtedness after the subordination will be adequately secured or will not be adversely affected by the transaction;

(6) When the FmHA or its successor agency under Public Law 103-354 indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total real estate security will be increased through improvement or acquisition by an amount at least equal to the additional advance. For Section 502 SFH loans subject to recapture, FmHA or its successor agency under Public Law 103-354 indebtedness will be determined in accordance with subpart I of part 1951 of this chapter.

(7) The funds obtained will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in exhibit M to subpart G of part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

(8) When a non-farm tract secures an SFH loan, the other lender's funds will only be used for the same purposes and